

NO. 5:09-CV-518-FL

Defendant.

## ORDER

Upon careful review of the record, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). In the absence of a specific and timely filed objection, the court reviews the magistrate judge’s

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findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). Here, upon a careful review of the pleadings and the M&R, the court ADOPTS as modified below the findings of the magistrate judge (DE # 19).

A plaintiff has an absolute right to amend his complaint once before any responsive pleading has been served, even if such amendment would be futile. Fed. R. Civ. P. 15(a); Galustian v. Peter, 591 F.3d 724, 729-30 (4th Cir. 2010). Where defendant had not yet filed a responsive pleading, plaintiff's motion to amend (DE # 13) must be and is ALLOWED. However, as the magistrate judge notes, neither the complaint nor the amended complaint contains any assertion of federal jurisdiction. The court agrees with the magistrate judge that plaintiff's pleadings at best can be construed as seeking \$10,713.92 plus interest at 4% on a sum of \$2,500.00 for a period of twenty years from an out-of-state citizen. Even under this extremely liberal interpretation of the pleadings, plaintiff's claim does not raise a federal question, see 28 U.S.C. § 1331, nor does it meet the \$75,000.00 threshold for diversity jurisdiction, see id. § 1332.

Accordingly, where this court does not possess subject matter jurisdiction over plaintiff's action, defendant's motion to dismiss the amended complaint (DE # 16) is GRANTED. Defendant's first motion to dismiss (DE # 5) is DENIED AS MOOT. Plaintiff's action is DISMISSED and the clerk is DIRECTED to close this case.

SO ORDERED, this the 19<sup>th</sup> day of July, 2010.

  
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LOUISE W. FLANAGAN  
Chief United States District Court Judge